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*NOT ADMITTED IN VA

September 6, 2012

VIA ELECTRONIC FILING

Julie Veach
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Comments in WC Docket No. 02-60
Nevada Hospital Association
Nevada Broadband Telemedicine Initiative**

Dear Ms. Veach:

On behalf of the Nevada Hospital Association (“NHA”), we submit these comments in connection with Federal Communications Commission (“FCC” or “Commission”) efforts to reform the Rural Health Care Program (“RHCP”). In 2010, NHA received a \$19.6 million award of federal financial assistance to establish a high capacity telemedicine network that will be available to medical providers throughout the State of Nevada. Known as the Nevada Broadband Telemedicine Initiative (“NBTI”), the award was part of the Broadband Technology Opportunities Program (“BTOP”), established as part of the American Recovery and Reinvestment Act of 2009 and administered by the National Telecommunications & Information Administration (“NTIA”).¹ NHA is submitting these comments to introduce the Commission to the NBTI, and to ensure the Commission does not inadvertently establish obstacles that could prevent NHA member hospitals that choose to participate in the NBTI from potentially benefitting from the reformed RHCP.

¹ For general information regarding NHA’s BTOP award, see <http://www2.ntia.doc.gov/grantee/nevada-hospital-association>.

Background

The NHA was established in 1960 as a trade association for its hospital members which include for-profit and not-for-profit entities located in rural and urban settings across the state. NHA is a federal tax exempt organization under section 501(c)(6) of the Internal Revenue Code. As noted, in August 2010, NHA received a BTOP award to implement a statewide broadband network capable of supporting advanced telemedicine for health care.

The NBTI network was custom designed specifically for the health care needs of the State of Nevada. Once complete, the network will facilitate the transmission and interconnection of telemedicine, enable remote diagnostics, transport and facilitate a future statewide Health Information Exchange, and will connect Nevada's major urban, research and teaching medical centers. In order to provide these services statewide, the NBTI network will bring critical infrastructure to unserved and underserved areas which will in turn increase the availability of affordable broadband in many rural and frontier communities.

The NBTI network is being partially financed, constructed, and operated by e-Care Nevada ("e-Care"), an independently owned private entity that has partnered with NHA to make the network a reality.² The design and permitting phase for the network commenced in January 2011 and construction began in March 2012. e-Care expects to begin connecting hospitals and health care providers in the state before the end of 2012. The NBTI network is on schedule to be fully constructed and operational by July 2013.

e-Care will be offering NBTI network services to NHA members on a competitive basis. Notwithstanding NHA's status as the NBTI grant recipient (and owner of grant-funded network assets), NHA members are not compelled to participate in the NBTI. Rather, each NHA member is free to choose whether to purchase broadband services from NBTI based on the price and quality of the services offered. Pricing will be established by e-Care as operator of the network and any contracts for NBTI network services will be solely between e-Care and the participating entity.

Finally, while NBTI investments are focused on bringing broadband connectivity to unserved and underserved areas of the state, the network itself will span the state, connecting rural health care providers to their urban counterparts. This is essential to fulfilling the primary purpose of the network which is supporting telemedicine. As such, e-Care will be providing services that utilize the NBTI network in all areas of the state.

² See <http://ecarenevada.com/about-ecare.html>. BTOP rules required applicants to provide a minimum 20% in match funding. After a competitive bidding process, NHA selected e-Care to provide the required match funding for NHA's award, and to design, construct, operate, and manage the network after it is built. In addition, e-Care has agreed to make additional capital investments in the NBTI beyond the minimum 20% match funding.

NBTI and the FCC's Rural Health Care Program

Under the FCC's current rules for the RHCP, many potential NBTI participants are eligible health care providers located in rural areas of Nevada. To the extent the Commission broadens the definition of eligible health care providers to cover new provider-types, or allows urban providers to participate in the reformed RHCP (to the extent they are part of a network with rural providers), the number of potential NBTI participants who will be eligible to participate in the RHCP will increase. If the Commission permits health care providers to participate in the RHCP as part of a consortium, this could also affect participation levels.

As noted, NHA members are not obligated to take services from the NBTI network once it is operational. Moreover, NHA recognizes that RHCP competitive bidding requirements apply to any NHA member seeking support from the RHCP for telecommunications or broadband services. However, in the event NHA members choose, after a competitive bid process, to obtain broadband services from the NBTI, it is critically important they not be barred from obtaining RHCP support if they are otherwise eligible. Such a bar could occur either administratively, due to potential lack of clarity in RHCP rules,³ or affirmatively due to misapplication of RHCP competitive bidding requirements.

To avoid potential confusion or delay, NHA would like to clarify that, while NHA as the grant recipient is owner of those network assets funded by the grant, *NHA is not a provider of broadband or telecommunications services*.⁴ Rather, e-Care is the entity that is operating the network and will be providing the service. Accordingly, where individual NHA members elect to obtain broadband or telecommunications services from e-Care over the NBTI, we do not believe this would constitute "self-provisioning" by a hospital.⁵

Note that failure to allow NHA members to participate in the RHCP could undermine the federal investment in the NBTI. This would happen if NHA members could obtain the RHCP subsidy *only if* they obtain broadband services from service providers *not utilizing the NBTI*. The Commission should be careful not to inadvertently adopt such a policy.⁶

³ The administrator of the RHCP is barred from interpreting unclear Commission rules. *See* 47 C.F.R. § 54.702(c).

⁴ Although NHA and e-Care have each obtained a Certificate of Public Convenience and Necessity with the Nevada Public Utilities Commission, e-Care has an exclusive 20-year contractual right to operate and provide telecommunications and broadband services over the NBTI.

⁵ Nevertheless, it should be noted that self-provisioning was permitted under the Commission RHC Pilot Program. *See* Rural Health Care Support Mechanism, WC Docket 02-60, Order, 22 FCC Rcd. 20360, 20407, fn.292 (2007) (requiring health care providers to obtain a service provider identification number from the program administrator if self-provisioning services). To the extent the Commission or the RHCP administrator views this potentially as a self-provisioning situation, the Commission should clarify that self-provisioning continues to be permitted provided a rule-compliant competitive bidding process has been conducted.

⁶ *See* Comments of California Telehealth Network, WC Docket 02-60, at 3-4 (filed Aug. 23, 2012) (reformed RHCP program should fund connections to BTOP grant recipients). CTN further requested the Commission to avoid

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Chief, Wireline Competition Bureau
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We appreciate your attention to these concerns. If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



Jeffrey A. Mitchell
Counsel for Nevada Hospital Association

Enclosure

cc: Marlene H. Dortch, Secretary, FCC
Linda Oliver, Esq., FCC
Bill Welch, President, NHA

policies that would pit BTOP-funded projects against RHCP-funded networks. *Id.* NHA agrees with CTN that FCC and NTIA programs should not be at cross-purposes.